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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO. 6542 OF 2005

PETITIONERS

1. Salil Lawrence, aged 43 years, S/o Late Shri K.C. Lawrence, R/o Railway bungalow No. C.T.42/2 Control Chaal, Mohan Nagar, Nagpur, General Secretary, South East Central Railway Men's Union; Styled wrongly in the cause title of the impugned award as (Working President) SECRMU, Guard (A), SEC Railway, Nagpur (Sr. D.O.M. Office).

2. Shri Manoj Behra, President South East Central Railway Men's Union, Styled in the cause title of the impugned award as (Divisional Co-ordinator) SECRMU, Senior Goods Guard, CYM/SDL, SEC Railway.

Versus

RESPONDENTS

1. Subrato Mukherjee, S/o Late Shri N.K. Mukherjee, Aged 58 years, Guard, S.E.C. Railway, Bilaspur, Styled wrongly in the cause title of the impugned award as Subrato Mukherjee, aged 58 years, S/o Late Shri N.K. Mukherjee, General Secretary, (Mahamantri) & J.S. Chouhan, S/o Late Shri N.S. Chouhan, Vice President (Central) Zonal Office, Bilaspur (C.G.). Through: South East Central Railway Men's Union.

2. Registrar, Trade Union Act, 1926 C/o Labour Commissioner's Office, Gitanjali Nagar, Shankar Nagar, Raipur (C.G.)

3. General Manager, South East Central Railway Zonal Office, Bilaspur (C.G.).

4. Chief Personnel Officer, South East Central Railway, Bilaspur (C.G).

5. Divisional Railways Manager, (Personnel), South East Central Railway, Bilaspur (C.G.).

6. Divisional Railways Manager, (Personnel), South East Central Railway, Raipur (C.G.).

7. Divisional Railways Manager, (Personnel), South East Central Railway, Nagpur.

Present : Shri P. Diwaker, learned Sr. Advocate with Shri S.S Sanyal, learned counsel for the petitioners.

Shri Manindra Shrivastava, learned Sr. Advocate with Mrs. Smitha Ghai, learned counsel for respondent No.1.

Shri Amit Chaudhari, learned Standing Counsel for the respondents – Railways.

Shri Yashwant Singh, learned Govt. Advocate for the State.

(O R D E R)
(Passed on 7th February, 2006)

This is another instance of a Trade Union rivalry brought to the fore and landed in this Court for judicial review of the question i.e., between the warring groups, which group, whether the group headed by the petitioners or the group headed by the first respondent are legally elected office bearers of the trade union concerned. The facts of the case loudly speak and highlight how ambition and chicanery on the part of the concerned tradesmen to capture the power of trade union, by hook or crook, threw out all democratic norms which should govern election of the office bearers of the trade union thereby doing great injustice to the trade union

movement in the industry and failing to protect the legitimate interest and rights of the members of the trade union.

(2) This writ petition is directed against the award of the State Industrial Court, Chhattisgarh, Raipur (*for short* **"the Industrial Court"**) dated 20-12-2005, passed in Reference case No. 09/I.T.U. Act/I/2004, whereby and whereunder holding that the election of the petitioner No.1 and petitioner No.2 as General Secretary and President of South East Central Railway Men's Union (*for short* **"SECRMU"**) as illegal and that the first respondent herein is the lawful General Secretary of SECRMU and entrusting the management of SECRMU to the first respondent and permitting him to hold fresh election to elect the office bearers of SECRMU.

(3) The background facts leading to filing of the writ petition, in brief, are as follows :

Initially, there was only one union in the name and style of South Eastern Railway Men's Union (*for short* **"SERMU"**). There was reorganisation of Railway Zones, as a consequence of which SERMU was bifurcated and SECRMU came into existence. SERMU was a Trade Union, registered under the Trade Unions Act, 1926 (*for short* " the Act"). Before formation of SECRMU, all the members of SECRMU were the members of SERMU. With the decision of formation of new zones, the then General Secretary of SERMU, namely, Mr. J.M. Bishwas wrote a letter to the Registrar of the Trade Unions, the second respondent herein, seeking permission to form new unions for the new zones, including one at Bilaspur. Out of those persons who intended to go with the new union, a list of proposed office bearers of the proposed union was prepared with a view to getting the registration of the new union done and also getting

the elections done subsequent thereto. In the proposed body, petitioner No.1 was the Working President, respondent No.1 was the General Secretary and Mr. J.M. Bishwas was the President. Mr. J.M. Bishwas died on 30-01-2003. According to the petitioners, after the death of Mr. J.M. Bishwas, petitioner No.1 became the President. At this stage itself, it is relevant to notice that according to both the contesting parties, on 11-07-2002 the SECRMU was not in existence and according to Shri Manindra Shrivastava, learned Senior Counsel for the first respondent, the formation of SECRMU was only in the pipeline that is to say in contemplation of the formation of new union. Furthermore, it also needs to be noticed at this stage itself that the Railway Board ordered reorganisation of the unions only on 08-08-2002. After the Railway Board directed reorganisation of the Unions on 08-08-2002, the then General Secretary of SERMU, Mr. J.M. Bishwas wrote a letter to the Registrar of Trade Unions seeking permission for formation of new unions for the new zones including one at Bilaspur. On 21-11-2002 SECRMU was registered and its constitution was approved. According to the petitioners, the new union SECRMU came into existence and started functioning w.e.f. 01-04-2003.

(4) According to the petitioners, the body of proposed office bearers formed in the meeting held on 11-07-2002 was only a temporary body formed for the purposes of registration of the union and conducting elections, but, the first respondent did not conduct the election and continued to function as General Secretary of SECRMU. However, the first respondent was arrested on 14-03-2004 for an offence punishable under Section 420/34 of the Indian Penal Code. On account of arrest of the first respondent, working of SECRMU came to standstill and in the

circumstance, the first petitioner being the working President was managing the affairs of the SECRMU. According to the petitioners, new elections were held on 26/04/2004 to elect office bearers of SECRMU and in that election, petitioner No.1 was elected as General Secretary and petitioner No.2 as President. Intimation of new election was given to the second respondent within the stipulated time enclosing a list of elected office bearers. After the election on 26/04/2004, even the Railway Authorities registered the change in SECRMU and recognized the new office bearers for the purpose of collective bargaining. When the matter stood thus, on 25/06/2004, the first respondent was bailed out. The first respondent filed Writ Petition No.1253 of 2004 in this Court for quashing the election held on 26/04/2004. This Court by its order dated 03/12/2004 disposed of the said writ petition with the following observations and directions:

> "Having heard learned counsel for the parties and having regard to the facts and circumstances of case, as all the elected office bearers are subject to recognition by the Registrar, Trade Unions, therefore, unless any office bearer is recognized by the Registrar, Trade Unions, he has no right to function as such. It is, therefore, directed that Railway Authorities (respondent Nos. 1 to 5) should dealt with only those office bearers who are recognized by the Registrar, Trade Unions.
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> As, Shri Verma, submits that after new elections list of new office bearers has already been submitted to the Registrar, Trade Unions along with application, the Registrar, Trade Unions is directed to take decision on the said application on its own merit."

As directed by this Court in the above order, the second respondent recognized the petitioners as office bearers of SECRMU and issued Form-E in favour of the petitioners. In the circumstance, South East Central Railway Men's Union through first respondent herein filed an

application under Section 28-J of the Act on 16/12/2004. Subsequently, the application was amended and the first respondent herein became the applicant – first party. Petitioners 1 and 2 are respondents 7 and 8 of the second party, respectively, before the Industrial Court. The relief sought by the first respondent was opposed by the petitioners by filing written statement. The Industrial Court passed the award on 20/12/2005 holding that the election of the petitioners as office bearers of SECRMU on 26/04/2004 was illegal and that the first respondent is the lawfully elected General Secretary of the SECRMU and it entrusted the management and affairs of SECRMU to him and directed him to conduct fresh election to elect office bearers of SECRMU.

(5) I have heard Shri P. Diwaker, learned Senior Counsel for the petitioners, Shri Manindra Shrivastava, learned Senior Counsel for the first respondent, Shri Amit Chaudhary, learned Standing Counsel for the respondents/Railway and Shri Yashwant Singh, learned Govt. Advocate for the State of Chhattisgarh, on 04/01/2006, 02/02/2006 and 03/02/2006.

(6) Shri P. Diwaker, learned Senior Counsel appearing for the petitioners advanced several arguments, technical and substantial. He contended that originally the application under Section 28-J of the Act was filed in the name of South East Central Railway Men's Union, not in the name of the first respondent and as such the application filed under Section 28-J of the Act should have been dismissed in *limine*. He contended that prescribed Court fee of Rs.10/- was not paid on the application filed under Section 28-J of the Act and, therefore, on that count also the application should have been dismissed. It was further contended by Shri P. Diwaker that no certified copy of constitution of the union was filed along with the application filed under Section 28-J of the

Act, though it was mandatory in terms of Regulation 32 of the Madhya Pradesh Trade Union Regulations, 1961 (*for short* **"Regulations"**). It was also contended that the application filed under Section 28-J of the Act by the first respondent was not in Form-Q. It was contended that the Industrial Court has passed the impugned award labouring under an impression that the petitioners did not file reply, whereas the petitioners had filed parawise reply before the Industrial Court after serving a copy of the same on the respondents 1 and 2. It was contended by Shri P. Diwaker that under Section 28-J of the Act the Industrial Court has no jurisdiction to decide the validity of the election held on 26/04/2004 and, therefore, it has exceeded its jurisdiction. It was contended by Shri Diwaker that the Industrial Court having rightly held that the term of the election of the first respondent had expired, it ought not to have permitted the first respondent to manage cash and other properties of the union. It was also contended by him that in directing the first respondent to conduct election, the Industrial Court exceeded its jurisdiction under Section 28-J of the Act. It was also contended that the remarks made against the second respondent in para 19 of the award are totally unwarranted and unjustified. It was also contended by Shri P. Diwaker that in the election held on 26/04/2004, twenty persons were elected as central office bearers of the union, but, in the application filed by the first respondent before the Industrial Court under Section 28-J of the Act, only two persons i.e. the petitioners were impleaded as party – respondents, but, the Industrial Court has held that the election of all office bearers as illegal and, therefore, on that count also the impugned award could not be sustained in law. It was pointed out that though remaining eighteen office bearers filed application in the writ petition to intervene, they did not press that application in order to avoid any further delay in adjudication of this writ

petition. It was lastly contended by Shri P. Diwaker that the first respondent is not a member of the SECRMU and, therefore, he was incompetent to maintain the application under Section 28-J of the Act and though such a plea was raised in the written arguments filed by the petitioners' counsel before the Industrial Court, the Industrial Court did not consider the same in the award.

(7) Shri Manindra Shrivastava, learned Senior Counsel for the first respondent, *per contra*, while supporting the impugned award of the Industrial Court would contend that though with regard to the election held on 11/07/2002, there are two versions, one by the petitioners and other by the first respondent, the Industrial Court has rightly accepted the version of the first respondent as correct recording factual finding in that regard and that factual finding could not be condemned as perverse for want of legal evidence. It was highlighted by Shri Manindra Shrivastava that even assuming that another view is also possible on the basis of the same evidence and circumstances of the case, even then, it is not for this Court to upset the view taken by the Industrial Court on appreciation of the evidence on record. Shri Manindra Shrivastava would highlight on parameters and limitations of judicial review of factual findings recorded by the Industrial Tribunals. Shri Manindra Shrivastava would next contend that the petitioners are estopped by their conduct from contending that there was no election on 11/07/2002. According to Shri Manindra Shrivastava, Annexure-P/10 obtained on 18/08/2004 is a registration certificated dated 21/11/2002 enclosing a list of office bearers elected on 11/07/2002 and as per that list petitioners 1 and 2 were elected as Working President and Deputy General Secretary respectively and the first respondent as General Secretary of the SECRMU and the petitioners

never opposed the said list at any point of time nor did they challenge the correctness of the same in any legal proceeding. Shri Manindra Shrivastava would contend that although the Industrial Court inadvertently has observed that the petitioners have not filed reply to the application, all the objections raised by the petitioners in the reply were also raised in the written arguments filed by the learned counsel for the petitioners before the Industrial Court and the Industrial Court has considered all those contentions and, therefore, there is no failure of justice and the petitioners should not take undue advantage of the situation. Meeting the contention of learned counsel for the petitioners that the first respondent is not a member of the SECRMU, Shri Manindra Shrivastava would contend that admittedly the first respondent was the office bearer of the trade union before and after formation of SECRMU and, if it is so, it is very much implied that he has been the member of the union all through. Meeting the contention that since the application under Section 28-J of the Act was filed initially in the name of the South East Central Railway Men's Union, not in the name of the first respondent, it was not maintainable, Shri Manindra Shrivastava would point out that after filing the application, the first respondent filed an application for amending the cause title on 23/11/2005 and that application was ordered and the first respondent himself became the first party – applicant. Meeting the contention that the first respondent did not pay stamp duty of Rs.10/- on the application filed under Section 28-J of the Act, Shri Shrivastava would point out that the fee to be paid on the application is not yet specified by the Rule-making Authority and, therefore, paying any stamp duty on the memorandum of the application filed under Section 28-J of the Act would not arise.

(8) By way of reply, Shri P. Diwaker learned Senior Counsel appearing the petitioners would contend that Annexure-P/10 is Form-B and not Form-E and list of the officers incorporated in Annexure-P/10 is only the list of office bearers of the proposed new Union, not the list of elected members. It was contended that there was absolutely no scope for conducting election on 11/07/2002 to elect office bearers of SECRMU, because, by that time the new union was not at all formed, and admittedly the Railway Board ordered reorganisation of unions only on 08/08/2002. It was also pointed out by Shri P. Diwaker that admittedly except in Bilaspur Zone, in all other six zones elections were held only after formation of the new zones in pursuance of the directions of the Railway Board issued on 08/08/2002 and, therefore, the claim put forth by the first respondent that there was election of office bearers on 11/07/2002 is highly incredible and totally false.

(9) Having heard learned counsel for the parties, the question for consideration is whether the petitioners have made out any ground to interfere with the impugned award of the industrial Court. In the first place, it is appropriate to dispose of certain technical grounds, if I may say so, hyper-technical grounds, urged by Shri P. Diwaker. The technical arguments advanced by Shri Diwaker against the maintainability of the application filed by the first respondent under Section 28-J of the Act relate to the fact that originally the application was filed in the name of the South East Central Railway Men's Union and not in the name of the first respondent; that no Court fee was paid on the application; that no certified copy of the constitution of the union was filed along with the application filed under Section 28-J of the Act as required in terms of Regulation 32 of the Regulations; and that the application filed by the first

respondent under Section 28-J of the Act was not in Form Q. Speaking about the disputes governed by the procedure laid down in the Code of Civil Procedure, it is stated that the Code of Civil Procedure is unfailing resource for an unscrupulous Indian litigant to stall the proceedings or to defer the decision-making to the peril of his opponent. I do not think that that is the exclusive reserve of the litigations which arise out the application of the provisions of the Code of Civil Procedure; quite often, such similarity was found in writ proceedings too. In the first place, it is needless to state that the above four contentions raised by Shri P. Diwaker are undeniably hyper-technical grounds and the Court at this distance of time, would be totally unjustified to reject the application filed by the first respondent under Section 28-J of the Act on those grounds even assuming that those grounds are made out. Moreover, there is no substance in the first and second contention, because, although initially the application under Section 28-J of the Act was filed in the name of the South East Central Railway Men's Union, subsequently, the first respondent made an application on 23/11/2005 and amended the cause title and he himself became the applicant. Secondly, the Court fee to be paid on the application filed under Section 28-J of the Act is not yet specified by the Rule-making Authority. In that view of the matter, paying any Court fee on the memorandum of the application would not arise. Furthermore, the application filed by the first respondent under Section 28-J of the Act, in substance, contains all the details and particulars which are required to be stated in Form-Q prescribed form. Failure to file certified copy of the constitution of the Union along with the application, in no way affected the decision-making or resulted any prejudice to the petitioners. Moreover, the petitioners did not object to the marking of the photocopy of the Constitution of the Union. Parties should win or lose cases on

substantial grounds and not on technical tortures. In that view of the matter, the above grounds urged by Shri P. Diwaker did not appeal to me nor acceptable to me.

(10) This takes me to the substance of the matter. As rightly stated by Shri Manindra Shrivastava, learned Senior Counsel for respondent No.1, that since there are two versions with regard to the elections held on 11/7/2002 and since the Industrial Court has accepted the version of the first respondent as correct and since the findings recorded by the Industrial Court to accept the version of the first respondent are based on evidence, if true, this Court as an appellate Court cannot reappreciate the evidence and record findings different from the findings recorded by the Industrial Court and that is not the legitimate power of this Court under Article 226 of the Constitution of India. It is true that the scope of judicial review in reviewing findings of fact, under Article 226 of the Constitution, is very much limited and circumscribed by authoritative judicial pronouncements. Unless, in a given case, the Court finds that the findings recorded by an authority, statutory or otherwise, is based on 'no evidence', it cannot reappreciate the evidence led before the authority and come to a conclusion which is different from the one arrived at by the authority or the Tribunal, as if the High Court is an appellate Court or authority over the decision taken by the authority or the Tribunal. The High Court shall not ordinarily enter into the disputed questions of fact like an appellate Court. The High Court cannot sit as Court of appeal over the findings of fact recorded by a competent inferior Tribunal. It is also well settled that the findings on fact cannot be interfered with on the ground that the evidence on which it was based was not satisfactory or sufficient. The only inquiry which the High Court can make under Article

226 of the Constitution while reviewing the findings of fact is whether there was any evidence at all, which, if believed, would sustain the findings recorded by the Tribunal or the authority or whether the Tribunal or the statutory authority acted upon irrelevant considerations, ignoring to take into account relevant factors; or whether the decision is unreasonable that no reasonable person would have made such a decision. The Judicial review, as quite often said and reiterated, is directed, not against the correctness of the decision, but, against the decision-making process. The principles stated above are well settled by umpteen number of Judgments of the Supreme Court and the High Courts and to cite a few are the decisions of the Supreme Court in **Sodhi Vs. Union of India** [1], **State of Madhya Pradesh Vs. M.V. Vyavsaya and Co.** [2], **B.I.Corporation Vs. Industrial Tribunal**[3], **ITO Vs. Seth Brothers**[4], **Om Prakash Vs. State of Haryana**[5], **Kochani Vs. State of Madrass**[6], **State of U.P. Vs. Dharmendra**[7], **State of Orissa Vs. Murlidhar**[8] and **State of Madrass Vs. Sundaram**[9]. The Supreme Court in **H.B. Gandhi Vs. Gopi Nath and others**[10] observed:

> "Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself".

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1. (1991) 2 SCC -382
2. (1997) 1 SCC -156
3. AIR 1957 SC -355
4. AIR 1970 SC -292
5. AIR 1970 SC -654
6. AIR 1959 SC -725
7. AIR 1989 SC -997
8. AIR 1963 SC -404
9. AIR 1965 SC-1103
10. (1992) Supp.(2) SCC-312

Thus, it is quite clear that the judicial review is not a key to the adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 of the Constitution, does not act as an appellate authority, but, exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. The High Court cannot reappreciate the evidence, as if it is a Court of first appeal, and reverse the findings of fact recorded by the Tribunal or the authority.

(11) In the light of the above principles governing the power of judicial review, let me proceed to consider the argument of Shri Manindra Shrivastava, learned Senior Counsel appearing for the first respondent. Before doing that, it needs to be noticed that a primary question arises in this case as to whether the election to elect office bearers of the SECRMU could have been held at all on 11/07/2002 in terms of law. Consideration of this question, at the threshold, according to me, is quite imperative to arrive at a just decision. According to the first respondent, the Railway Authorities vide Annexure-P/22 dated 28/06/2002 directed the Railway Men's Federation to form separate / new trade unions for newly created zones and accordingly they held an election on 11/07/2002 for SECRMU. This assertion of the first respondent was seriously contested and disputed by the petitioners by contending that the Railway Board ordered reorganisation of the unions only on 08/08/2002 and that letter was received in Bilaspur zone only on 11/08/2002 and, therefore, holding election to elect office bearers of the SECRMU before 11/08/2002 could not arise. There is no controversy between the parties that after the decision was taken to create new zones, the Railway Board for the first time issued direction only on 08/08/2002 for reorganisation of unions,

consequent upon creation of new zones. It was fairly conceded by Shri Manindra Shrivastava, learned Senior Counsel, that after the formation of SECRMU, an election to the SECRMU had to be held in conformity with the relevant provisions of the Act, such as, provisions of Section 5 which deals with making of application for registration, Section 6 which deals with the provisions to be contained in the rules of the Trade Union, Section 8 which deals with the registration of the Trade Union and Section 9 which deals with the issuance of Certificate of Registration etc. There is absolutely no material placed before the Industrial Court or before this Court to show that before 11/07/2002 SECRMU was formed, an application was made for registering the same under Section 5 of the Act or to show that the executive of the proposed trade union was constituted in accordance with the provisions of the Act and the Rules made thereof or complying with the other mandatory provisions of Section 6 of the Act. The formidable above objection raised by the petitioners herein was summarily rejected by the Industrial Court, if I may say so, by misconstruing Annexure-P/10 dated 21/11/2002, a certified copy of which was obtained only on 18/08/2004, as a Certificate of Registration issued by the Registrar of the Trade Unions under Section 9 of the Act in Form-E, whereas the evidence on record would disclose that Anneuxre-P/10 was issued in Form-B and that is not a certification of registration envisaged under Section 9 of the Act. The Industrial Court treating Annexure-P/10 as certificate of registration in Form-E issued under Section 9 of the Act and on the ground that that certificate was not challenged by the writ petitioners, held that the argument advanced by the petitioners was fallacious and without any substance. The circumstances brought in evidence would go to show that what was done on 11/07/2002 by certain members / office bearers of Bilaspur Division was not election to elect the

office bearers of the then non-existing SECRMU but enlistment of certain members as office bearers of the proposed new union to come. Apart from the fact that as on 11/07/2002 SECRMU was not formed, the first respondent himself has admitted on oath that on 11/07/2002 the elections were held for electing only President and General Secretary of the SECRMU and the rest of the aforesaid office bearers were elected in a subsequent election held at Kolkata on a subsequent date. This is highly incredible and cannot be accepted. This admission itself would destroy the credibility of the assertion of the first respondent that election was held on 11/07/2002 at Bilaspur, because, the constitution of the union would not permit holding of elections in piecemeal. Apart from the other attending circumstances which go to show that before 11/07/2002 SECRMU was not in existence, the other weighty circumstance which is against the first respondent's assertion is that one S.K. Faizuddin though claimed to have attended the meeting on 11/07/2002 was, in fact, on duty and he was not granted leave nor relieved by the Railway Authorities to attend election alleged to have held on 11/07/2002. Therefore, I find credence in the assertion of the petitioners that on or before 11/07/2002 SECRMU was not formed and no meeting of the said union was held on 11/07/2002 to elect office bearers of the said union and what was held on 11/07/2002 was only a formal meeting of the Divisional Executive Committee of the members of the Bilaspur Division of the SERMU and in the said meeting all those who intended to go with the proposed new union, namely, SECRMU, prepared the list of proposed office bearers with a view to getting the registration of the new union done and also getting the elections held subsequent thereto to elect office bearers of the new union on a regular basis. The list of office bearers of the proposed union was sent to the second respondent – Registrar of Trade Unions and on

that basis the second respondent has issued Annexure-P/10 dated 21/11/2002. As already pointed out supra, Annexure-P/10 is not a certificate of registration issued under Section 9 of the Act in Form-E. the resultant position is that in law, election to elect office bearers of the SECRMU could not be held on 11/07/2002, because, by that time SECRMU was not formed at all. Holding an election to elect office bearers of a non-existing trade union is not envisaged under the provisions of the Act or the rules framed thereunder or the rules or bylaws of the SECRMU. I find perversity in the reasoning of the Industrial Court and consequently, it has reached a wrong conclusion. In fact, the Industrial Court did not apply its mind to the basic question whether the election to elect office bearers of the SECRMU could have been conducted at all in terms of law on 11/07/2002 in the way expected of it.

(12) In view of the above opinion, there is no need for the Court to deal with several contentious issues brought before the Court such as that whether the participation of the petitioners in the meeting held on 11/07/2002 and their subsequent conduct would disentitle them to the relief as contended by Shri Manindra Shrivastava. Be that as it may, the evidence placed before the Industrial Court as well as before this Court would satisfactorily prove that after the Railway Board ordered reorganisation of unions on 08/08/2002 SECRMU was formed and came into existence and had started functioning only w.e.f. 01/07/2004 and elections were held on 26/04/2004 to elect the office bearers of the new union. As directed by this Court in Writ Petition No.1253 of 2004, the second respondent – Registrar of Trade Unions having applied his mind issued certificate of registration in Form-E under Section 9 of the Act.

(13) I also find considerable force in the submission of Shri Diwakar that there is absolutely no satisfactory evidence or materials led before the Industrial Court and this Court to show that the first respondent was a member of SECRMU. Shri Manindra Shrivastava learned counsel for the first respondent understandably having regard to the fact that there are no materials to show that after the formation of the SECRMU, the first respondent became member of that union would harp on the fact that if the first respondent was not a member, he could not have held the post of office bearer of the union before and after 11/07/2002 and that the very fact that the first respondent had been office bearer of the union would imply that he is a member of SECRMU. This is a strange submission and not acceptable to me. The fact that in the list of proposed office bearers of the new union prepared on 11-07-2002, the first respondent was shown to be General Secretary of the proposed Union is not in dispute and that the first respondent by virtue of that decision continued to function as General Secretary of the proposed new union, that fact itself without anything further, could not lead to an inference that the first respondent was a member of the SECRMU. There is a well-laid and elaborate procedure in the rules and bylaws of the union governing how an employee can become a member of the union. There is no iota of evidence to show that the first respondent is a member of SECRMU. If the first respondent is not a member of SECRMU and if he was not elected as an office bearer of the said union after its formation, he could not maintain the application under Section 28-J of the Act. Sub-Section (1) of Section 28-J of the Act reads as follows : -

> " 28J – Dispute as to officer of registered Trade Union - (1) If there is any dispute as to who is the lawful officer of a registered Trade Union, any person claiming to be an such

an officer or the Registrar may refer the dispute to the Industrial Court in such manner and on payment of such fee not exceeding ten rupees as may be prescribed. "

In this case, there is no evidence to show that after the formation SECRMU, the first respondent became a member and/or contested the election to post of any office bearer of the union. If that is so, in terms of sub-Section (1) of Section 28–J of the Act, he cannot maintain the application.

(14) Furthermore, in the election held on 26/04/2004, as many as 20 persons were elected as office bearers of the SECRMU, but, the first respondent did not implead all of them except the petitioners, as party-respondents to the application filed by him before the Industrial Court under Section 28-J of the Act. When that is the position, the Industrial Court quite curiously without directing the first respondent to impelad the left-out office bearers as party – respondents to the application or without itself impleading them as party – respondents has held that the elections held on 26-04-2004 was illegal not only with regard to the election of the petitioners, but , also with regard to the whole election. Looking from that angle, it should be held that the order made by the Industrial Court is in utter violation of the principles of natural justice. It is needless to state that the impugned award has extinguished the rights of those office bearers who are not parties to the application, that too, without hearing them.

(15) Looking from any angle, the impugned award of the Industrial Court cannot be sustained. Sufficient and weighty grounds are made out to interfere with the same. In that view of the matter, I allow the writ petition and quash the impugned award dated 20/12/2005 passed by the Industrial Court, Chhattisgarh at Raipur in Ref. case No. 09/I.T.U.

Act/I/2004, and dismiss the Application filed by the first respondent under Section 28-J of the Act. The parties shall bear their respective costs in this petition.

Sd/-
Chief Justice

Brajesh
Subbu